

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

JAMES RIVER INSURANCE COMPANY

Plaintiff,

VS.

C&M CONTRACTING, INC. AND
UNITED SPECIALTY INSURANCE
COMPANY,

Defendant.

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No. _____

ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT

TO THE HONORABLE COURT:

COMES NOW, James River Insurance Company ("James River"), and makes and files this, its Original Complaint for Declaratory Judgment and would show the Court the following:

**I.
Introduction**

1.1 This is an action for declaratory judgment. Plaintiff, one of the insurers of C&M Contracting, Inc. ("C&M"), seek a declaration of its rights and obligations to C&M in regard to various suits filed by the Mercedes Independent School District ("MISD"). In addition, Plaintiff seeks a declaration that United Specialty Insurance Company ("United Specialty"), as insurer of C&M, has an obligation to participate in defense and indemnity of C&M.

II. Parties

2.1 Plaintiff James River Insurance Company is an insurance company duly organized and existing under the laws of the State of Virginia, with its principal place of business in Virginia.

2.2 Defendant C&M Contracting, Inc. is a corporation duly organized and operating under the laws of the State of Texas, with its principal place of business in Texas. C&M may be served through its agent for service of process, Vicki Murray, at 5401 N. Cage Blvd., Pharr, Texas, 78577

2.3 Defendant United Specialty Insurance Company is a corporation duly organized and operating under the laws of the State of Delaware, with its principal place of business in Fort Worth, Texas. Under the terms of the policy, United Specialty agrees to service of process on the Claims Manager of Companion TPA, 51 Clemson Road, Columbia, South Carolina.

III. Jurisdiction and Venue

3.1 This Court has diversity jurisdiction pursuant to 28 U.S.C. §1332. Plaintiff is not a citizen of Texas and does not maintain their principal place of business there. Defendant C&M is a citizen of Texas with its principal place of business there. United Specialty is a citizen of both Texas and Delaware. The amount in controversy, exclusive of interest and costs, exceeds \$75,000.00.

3.2 Venue is proper in the United States District Court for the Southern District of Texas, McAllen Division, pursuant to 28 U.S.C. §1391(a)(2) because all or a substantial part of the events giving rise to the underlying lawsuits occurred in Mercedes, Texas.

IV. The Underlying Lawsuits

4.1 The claims against C&M are asserted by the MISD and arise out of roofing work performed on various schools. The underlying lawsuits are:

Cause No. C-1473-06-I-1; *Mercedes Independent School District [Re: Hinojosa Elementary] v. Scoggins Construction Company, Inc. v. Alejandro Bazan d/b/a Alex's Concrete Finishing, et al.*; In the 398th Judicial District Court of Hidalgo County, Texas

Cause No. C-159409-A; *Mercedes Independent School District (Re: Mercedes Early Childhood Center) v. C & M Contracting, Inc., et al.*; In the 92nd Judicial District Court of Hidalgo County, Texas

Cause No. C-1596-09-G; *Mercedes Independent School District (Re: Kennedy Elementary) v. Alejandro Bazan d/b/a Alex's Concrete Finishing, et al.*; In the 370th JDC of Hidalgo County, Texas

Cause No. C-1473-06-I-4; *Mercedes Independent School District (Re: Taylor Elementary) v. Scoggins Construction Company, Inc.*, In the 398th District Court of Hidalgo County, Texas

Cause No. C-1473-06-I-3; *Mercedes Independent School District (Re: Mercedes High School) v. Scoggins Construction Company, Inc.*, In the 398th JDC of Hidalgo County, Texas

Two of the suits, involving the Kennedy Elementary School and Mercedes Early Childhood Center, have been settled, and settlement is pending in the Mercedes High School case. However, the suits related to the Hinojosa Elementary and Taylor Elementary remain pending. Plaintiff James River, along with other insurers—Maxum Specialty Insurance Company, Admiral Insurance Company and American Equity Insurance Company—has acknowledged a defense obligation, is presently participating in the defense of C&M in the pending lawsuits, and participated in the defense and settlement of C&M in the settled lawsuits.

4.2 In addition, C&M has been sued for roofing work at the Edcouch Elsa Fine Arts Building by the Edcouch Elsa ISD. The suit is styled, Cause No. C-1166-08-1; *Edcouch Elsa Independent School District (Re: Mercedes High School) v. United Fire & Casualty Company, et al.*, In the 398th JDC of Hidalgo County, Texas.

4.3 United Specialty has denied defense for all of the pending and settled lawsuits.

4.4 The allegations in each of the lawsuit arise out of alleged defects in the roofing work performed by C&M. Each of the policies includes exclusions for damage to or arising out of the insured's own work or product. Accordingly, some or all of the damage in the pending lawsuits is not covered.

4.5 In addition, each of the policies requires that the damage arise from an occurrence, and that the damage occurred during the policy period. While each of the policies covers a different period, no insurer owes coverage for damages outside of its policy period. Further, United Specialty owes coverage for damages during its policy period. United Specialty owes defense as its policy period is implicated in each suit.

4.5 The relief sought by James River is twofold. James River seeks a declaration, as to the pending lawsuits, that there is no coverage, and no duty to indemnify C&M, for the damage to the roof itself, pursuant to the policy terms. James River also seeks a declaration that there is no coverage for any damage that falls outside its policy term.

4.6 In addition, James River seeks a declaration that, based upon the current pleadings in the pending lawsuits, United Specialty owes a defense to C&M and owes reimbursement for a portion of the defense costs incurred to date. In addition, United Specialty owes reimbursement for a portion of the defense costs and indemnity payments in the settled lawsuits.

WHEREFORE, PREMISES CONSIDERED, Plaintiff James River prays for judgment declaring the rights and obligations of the parties, and in particular for a declaration that United Specialty owes a duty to defend C&M against the claims raised in the underlying pending lawsuits and to reimburse James River, based on allocation among all defending insurers, for defense and indemnity in the settled lawsuits, and for such other and further relief, at law or in equity, to which it may be justly entitled in law or in equity.

Respectfully submitted,

s/ Beth D. Bradley

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